

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 143 of 1989

in

SPECIAL CIVIL APPLICATION NO. 2721 OF 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MEGHJIBHAI RATNABHAI KANODIYA

Versus

STATE OF GUJARAT

Appearance:

MR SR SHAH for Appellants

MR BY MANKAD, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 3, 5

MR PM RAVAL for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 16/12/98

ORAL JUDGEMENT [PER : C.K.BUCH,J]

Being aggrieved by the judgment and order dated 20.4.1989 passed by learned Single Judge of this Court in Special Civil Application No. 2721 of 1989, the appellants- original petitioners have preferred this

Letters Patent Appeal.

The appellants-petitioners are the residents of town Gariadhar of district Bhavnagar. According to the appellants, the order passed by learned Deputy Secretary of State of Gujarat concerning the Information, Broadcasting and Tourism Department, has committed an error in granting NOC as well as licence to erect and run cinema in the midst of residential area of town Gariadhar. According to the appellants, the permission is granted though the site is in the vicinity of ST Bus Depot and the Manager of the concerned Bus Depot had also objected to the grant of such permission. It was also submitted before the learned Single Judge by the petitioners- appellants herein that NA permission was granted to the owner of the land for the purpose of using the land in question only for residential purpose.

When Spl.Civil Application was moved before learned Single Judge, learned Single Judge was pleased to dismiss the said petition by passing the following order:-

" Taking into consideration the reasons given by the State Government, the order does not call for interference. Hence, rejected."

The backbone submission of learned counsel for the petitioner is that though the land was granted NA permission to use the same for residential purpose only, permission to run cinema theatre i.e. using the land for commercial purpose, is apparently wrong and in contravention of the NA permission granted. However, learned AGP as well as learned Senior Counsel Mr. P.M.Raval appearing for contesting respondent pointed out that in the year 1979, District Panchayat, Bhavnagar permitted change of user of the said land by passing resolution and land owner was permitted to use it for commercial purpose. In view of this, contention of learned counsel appearing for the appellants that NOC to erect land is in contravention of NA Permission, has no legs to stand. It has been argued by learned counsel appearing for both the parties that the question has now become academic as the cinema theatre is already erected and is exhibiting cinema under NOC and licence granted earlier. In our opinion, as the learned counsel appearing for the parties agree to the position that the appeal remains as an academic issue, we are not inclined to interfere with the order passed by learned Single Judge dismissing the writ petition. The question raised in the writ petition as well as in this appeal was in the nature of Public Interest Litigation, which by afflux of time, is rendered academic and infructuous. In view of

this also, we are not inclined to decide the matter on merits.

In the result, appeal fails and is dismissed with no order as to costs.

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